IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1206 OF 1999

Harish Lamba of Bombay Indian]
Inhabitant sole proprietor of]
Volga Frozen Food & Ice-Cream]
Co. residing at 36, CCI Chambers]
Dinshaw Wacchha Road, Mumbai]
400020]..Petitioner

Vs.

1. Municipal Corporation of]
Greater Mumbai having their]
office at Mahanagar Palika]
Marg, Mumbai-400001]
]
2. Huseini A.Barodawala the]
trustees of a trust known as]
Shaikhali Family Trust a]
private trust having their]
address at Zenith Tin Works]
Ltd. Opp.Race Course,]
Mahalaxmi, K.K.Marg, Mumbai]
400034]
]
3. Central Bank of India]
a Banking Corporation having]
its branch office at 1C]
C.Khadye Marg, Mahalaxmi]
Mumbai-400034]..Respondents

...

Mr.Rajiv Narula i/b S.M.Khaire for Petitioner
Mr.V.Mahadik for Respondent-B.M.C.

...

CORAM : DR.S.RADHAKRISHNAN AND
SMT.V.K.TAHILRAMANI, JJ.

DATE : NOVEMBER 21, 2006

ORAL JUDGMENT : [PER SMT.V.K.TAHILRAMANI,J.]

1. In this petition under Article 226 of the Constitution of India, the petitioner has impugned bills/demands (Exhibit-E1 to E11 to the petition) made by the respondent no.1-corporation, as well as the Warrant of Attachment dated 5th August, 1998, wherein it is stated that if the amount of Rs.10,60,312/- was not paid, the premises would be attached.

2. The petitioner is carrying on business as sole proprietor in the name and style of Volga Frozen Foods and Ice-cream Company. The said firm is located at Volga House, 1-C, K.K.Marg, Mahalaxmi, Bombay-400034. As the Ice-cream factory required huge amount of water, the petitioner was granted fixed water quota of 10 lakh gallons of water by the corporation. The Ice-cream factory conducted by the petitioner in the said premises came to be closed down from 31.3.1984 and the petitioner ceased to utilise the fixed water quota allotted by respondent no.1-corporation. By letter dated 2.2.1987 the

petitioner called upon respondent no.1-corporation to charge water on actual consumption basis. On 15.10.1987 a water meter was installed by the corporation on the petitioner's premises. By letter dated 27.1.1992, respondent no.1-corporation informed the petitioner that since their company is closed down since long, there is no point in retaining the existing connection to the factory of fixed water quota. By the said letter, the petitioner was informed that their connection would be cut off. However, the water connection and supply came to be cut off by the corporation on 25.10.1993. Thereafter, the petitioner obtained water supply to the premises from private water tankers.

3. However, from 10.1.1997 the respondent-corporation raised bills retrospectively from 1.10.1993 onwards for water taxes in lieu of water charges as according to the corporation, the bills for the period from 1.10.1993 onwards were not paid by the petitioner. Respondent no.1-corporation issued Warrant for attachment dated 5th August, 1998 of the building premises occupied by the petitioner.

This Warrant of Attachment was issued for non-payment of Rs.10,60,312/-. By letter dated 18.11.1998, respondent no.1-corporation informed the petitioner that if he did not pay the water taxes, they would proceed to advertise the public auction relating to premises occupied by the petitioner. Hence, the present petition has been preferred by the petitioner.

4. The learned counsel for the petitioner submitted that as water connection and supply of water to the petitioner's premises, was cut off on 25.10.1993, thereafter the corporation could not levy any water charges on the petitioner for any water supply after that date. He further submitted that the power to collect any water charges or taxes under Section 169 of the Mumbai Municipal Corporation Act, 1888, is only for actual supply of water or services by the Municipal Corporation. The fact that the corporation discontinued the water connection to the petitioner's premises on 25.10.1993 has not been denied by the corporation. Nothing has been pointed out by the corporation to show that after 25.10.1993, the corporation has restarted or reconnected water connection and or supply to the

premises of the petitioner. Thus, the position is that from 25.10.1993 the water connection and supply of water to the petitioner's premises was cut off by the corporation. From this, it is clear that from 25.10.1993 onwards no water supply was continued or effected or any services were rendered by the corporation to the petitioner's premises in relation to the water supply. Thus, from 25.10.1993, there was no benefit of water supply or any corresponding services to the petitioner's premises by the respondent no.1-corporation.

5. In **Nagpal Printing Mills and another Vs. Municipal Corporation of Greater Mumbai; AIR 1988 Bom.91,** this Court observed that "Section 169 of the B.M.C.Act specifically empowers the Standing Committee to make rules to charge for the supply of water and by such rules to determine water charges based on a measurement or estimated measurement or the quantity of water supplied". This Court further held that "Section 169 empowers the Corporation to levy charge only in respect of water that has in fact, been supplied to and consumed by consumer and it is to be levied on the basis of measurement or

estimated measurement."

6. Being aggrieved by the above decision of the High Court, the Municipal Corporation preferred Special Leave Petition against the said judgment before the Supreme Court. The said decision is reported in **1988 (2) Bom.C.R.325 - Municipal Corporation of Greater Bombay Vs. M/s. Nagpal Printing Mills and another.** In the said decision, the Supreme Court has observed that "We are in agreement with the High Court's view that it empowers the Corporation to levy charge only in respect of water that has in fact been supplied to and consumed by the consumer and it is to be levied on the basis of measurement or estimated measurement". It is further observed that "the supply referred to in Section 169 of the Act, is a supply which is, in fact, supplied to the consumer and consumed by it".

7. In view of these decisions, it is clear that the supply referred to in Section 169 of the B.M.C. Act for which the corporation can charge, is the supply which has infact, been supplied to the consumer and consumed by the consumer. In the present case, there has been no supply of

water to the petitioner's premises from 23.10.1993, hence, there is no question of consumption of any such supply by the petitioner. Hence, no bills can be raised by the corporation in respect of supply of water after 25.10.1993. In this view of the matter, impugned bills/demands for water charges raised by the respondent no.1-corporation relating to the period from 25.10.1993 onwards, are quashed and set aside so also the Warrant of Attachment dated 5.8.1998, is set aside.

8. In the result, petition succeeds. Rule made absolute in terms of prayer clauses (a) and (b).

No order as to costs.

[DR.S.RADHAKRISHNAN, J.]

[SMT.V.K.TAHILRAMANI,J.]